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Gulam Fatimah bt Munshi v Yang Dipertua Majlis Perbandaran Kuala Kangsar & Ors

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HIGH COURT (TAIPING) — CIVIL SUIT NO 21NCVC-09–11 OF 2014
MOHAMED ZAINI MAZLAN JC
28 JULY 2015

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Civil Procedure — Amendment — Statement of claim — Plaintiff's solicitor overlooked to conduct search with land office — Amendment sought merely to add phrase 'suing for herself and as a trustee' in description for plaintiff — Application objected by third defendant — Third defendant sought to strike out plaintiff's claim — Whether amendment designed to delay striking out application — Rules of Court 2012 O 20 r 5(3) & (4)

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The plaintiff was the occupant and beneficial owner of a house. She claimed that the first and second defendants had breached their statutory duties in approving the development plan submitted by the third defendant, who had went on to construct shop houses next to the land adjoining her dwelling. The plaintiff alleged that the construction of the shop houses was done haphazardly, and that the end result had caused nuisance to her. The plaintiff sought for some declaratory orders, injunction and damages against all three defendants. Her solicitor had openly admitted that he had overlooked to conduct a search with the land office prior to filing this suit, and that he had when recently conducting a search with the land office, discovered that the plaintiff was registered as a trustee for the land that her house sits on. The plaintiff wanted to amend her statement of claim, which was opposed by only the third defendant. The gist of the amendment sought was merely to add the phrase 'suing for herself and as a trustee' in the description for the plaintiff, and to add the fact that the plaintiff was a trustee of the land concerned in the introductory paragraph of the statement of claim. The plaintiff also sought to include the name of the Act that she claimed was breached by the first and second defendants, namely the Uniform Building By-Laws 1984 and the Street Drainage and Building Act 1974. The third defendant filed an application to strike out the plaintiff's claim and alleged that the amendment was designed to delay its striking out application.

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Held, allowing the appeal:

(1) An amendment required due to mistake, and even if made late, should be allowed, provided it does not cause injustice to the other party. Order 20 r 5(3) and (4) of the Rules of Court 2012 stipulates that an amendment to correct the name of the party is allowed, even if the amendment will

lead to a substitution of a new party, or altering the capacity in which a party sues. The proviso is that, this court must be satisfied that the mistake sought to be corrected was a genuine mistake, and not misleading (see paras 6–7).

(2) The application was bona fide and that the mistake as admitted by the plaintiff's solicitor was a genuine mistake. The latter had clearly admitted his error, and there were no reasons to think otherwise. The third defendant had not provided an iota of evidence to support its allegation that the plaintiff's application was not bona fide (see para 8).

(3) The amendments sought will lead to an accurate description of the capacity of the plaintiff. Furthermore, there was no evidence that injustice would be caused to the third defendant by allowing the amendment. The third defendant's application to strike out was also heard and decided simultaneously with this application for amendment. The third defendant's allegation that the plaintiff's application was done to delay its application was therefore misplaced (see para 9).

[Bahasa Malaysia summary

Plaintif adalah penghuni dan pemilik benefisial sebuah rumah. Dia mendakwa bahawa defendan-defendan pertama dan kedua telah melanggar tanggungjawab statutori mereka dalam meluluskan pelan pembangunan yang dimasukkan oleh defendan ketiga, yang telah terus membina rumah kedai di tanah bersebelahan dengan rumahnya. Plaintif mendakwa bahawa pembinaan rumah kedai dilakukan secara tidak teratur, dan bahawa akibatnya telah menyebabkan gangguan kepadanya. Plaintif memohon untuk perintah perisytiharan, injunksi dan ganti rugi terhadap ketiga-tiga defendan. Peguamnya telah secara terbuka mengaku yang dia telah terlepas pandang untuk melakukan carian dengan pejabat tanah sebelum memfailkan tindakan ini, dan bahawa dia baru-baru ini apabila melakukan carian dengan pejabat tanah, mendapati bahawa palintif didaftarkan sebagai pemegang amanah untuk tanah di mana rumahnya terletak. Plaintif hendak meminda penyataan tuntutannya, yang mana dibantah oleh hanya defendan ketiga. Inti pati pindaan yang dipohon hanya untuk menambah frasa 'suing for herself and as a trustee' dalam penjelasan untuk plaintif, dan untuk menambah fakta bahawa plaintif adalah pemegang amanah tanah berkaitan dalam perenggan pengenalan penyataan tuntutan tersebut. Plaintif juga memohon untuk memasukkan nama Akta yang didakwa dilanggar oleh defendan pertama dan kedua, iaitu Undang-Undang Kecil Bangunan Seragam 1984 dan Akta Jalan, Parit dan Bangunan 1974. Defendan ketiga memfailkan permohonan untuk membatalkan tuntutan plaintif dan mendakwa bahawa pindaan dibuat untuk melambatkan permohonan pembatalannya.

Diputuskan, membenarkan rayuan:

(1) Pindaan dikehendaki akibat kesilapan, dan walaupun ia dibuat lewat, patut dibenarkan, dengan syarat ia tidak menyebabkan ketidakadilan kepada pihak satu lagi. Aturan 20 k 5(3) dan (4) Kaedah-Kaedah Mahkamah 2012 menetapkan bahawa pindaan untuk membetulkan nama pihak dibenarkan, walaupun pindaan tersebut akan membawa kepada penggantian pihak baru, atau mengubah kapasiti dalam mana pihak menyaman. Peruntukan adalah bahawa, mahkamah ini mesti berpuas hati bahawa kesilapan yang dipohon untuk dibetulkan adalah kesilapan tulen, dan bukan mengelirukan (lihat perenggan 6–7).

(2) Permohonan adalah suci hati dan bahawa kesilapan yang diakui oleh peguam plaintif adalah kesilapan tulen. Peguam telah dengan jelas mengakui kesilapannya, dan tidak terdapat alasan untuk memikirkan sebaliknya. Defendan ketiga tidak memberikan sedikit pun keterangan untuk menyokong dakwaannya bahawa permohonan plaintif bukan suci hati (lihat perenggan 8).

(3) Pindaan yang dipohon akan membawa kepada penjelasan yang tepat mengenai kapasiti plaintif. Selanjutnya, tidak terdapat keterangan bahawa ketidakadilan akan diakibatkan kepada defendan ketiga dengan membenarkan pindaan. Permohonan defendan ketiga untuk pembatalan juga didengar dan diputuskan pada masa yang sama dengan permohonan ini untuk pindaan. Dakwaan defendan ketiga bahawa permohonan plaintif dibuat untuk melambatkan permohonannya adalah dengan itu salah (lihat perenggan 9).]

Notes

For cases on statement of claim, see 2(1) *Mallal's Digest* (5th Ed, 2015) paras 719–743.

Cases referred to

Guo Xiang Yang v Friendly Oriental Sdn Bhd & Anor [2000] 6 MLJ 825, HC (refd)

Skrine & Co v MBf Capital Bhd & Anor [1998] 3 MLJ 649, CA (refd)

Legislation referred to

Rules of Court 2012 O 20 r 5(3), (4)
Street Drainage and Building Act 1974
Uniform Building By-Laws 1984

Dominic Selvam Gnanapragasam (Rajandran Dominic & Co) for the plaintiff.
Su Keong Siew (KS Su & Mah) for the defendants.

Mohamed Zaini Mazlan JC:

INTRODUCTION

[1] The plaintiff has sought to amend her statement of claim, which was opposed by only the third defendant. I had after reading the written submissions and hearing further oral submissions, allowed the plaintiff's claim with no order as to costs.

[2] The plaintiff is the occupant and beneficial owner of a house in Kuala Kangsar. She claims that that the first and second defendants had breached their statutory duties in approving the development plan submitted by the third defendant, who had went on to construct a shophouses next to the land adjoining her dwelling. The plaintiff alleged that the construction of the shophouses was done haphazardly, and that the end result had caused nuisance to her. With this suit, the plaintiff sought for some declaratory orders, injunction and damages against all three defendants.

[3] The affidavit in support of the plaintiff's application for amendment was affirmed by her solicitor. Her solicitor had openly admitted that he had overlooked to conduct a search with the land office prior to filing this suit, and that he had when recently conducting a search with the land office, discovered that the plaintiff was registered as a trustee for the land that her house sits on.

[4] The gist of the amendment sought was merely to add the phrase 'suing for herself and as a trustee' in the description for the plaintiff, and to add the fact that the plaintiff was a trustee of the land concerned in the introductory paragraph of the statement of claim. The plaintiff also sought to include the name of the Act that she claimed was breached by the first and second defendants, namely the Uniform Building By-Laws 1984 and the Street Drainage and Building Act 1974 ('Act 133').

[5] Nothing substantive was averred in the third defendant's affidavit in opposition, as it merely contained denials of what was stated in the plaintiff's affidavit. The third defendant had also filed an application to strike out the plaintiff's claim, and alleged that this application for amendment was designed to delay its striking out application.

[6] The cases pertaining to amendments are well settled. An amendment required due to mistake, and even if made late, should be allowed, provided it does not cause injustice to the other party; *Skrine & Co v MBf Capital Bhd & Anor* [1998] 3 MLJ 649 and *Guo Xiang Yang v Friendly Oriental Sdn Bhd & Anor* [2000] 6 MLJ 825.

[7] Furthermore, O 20 r 5(3) and (4) of the Rules of Court 2012 stipulates that an amendment to correct the name of the party is allowed, even if the amendment will lead to a substitution of a new party, or altering the capacity in which a party sues. The proviso is that, this court must be satisfied that the mistake sought to be corrected was a genuine mistake, and not misleading.

[8] I am of the view that the application was bona fide, and that the mistake as admitted by the plaintiff's solicitor was a genuine mistake. The latter had clearly admitted his error, and I have no reasons to think otherwise. The third defendant has not provided an iota of evidence to support its allegation that the plaintiff's application was not bona fide.

[9] In any event, the amendments sought will lead to an accurate description of the capacity of the plaintiff. Furthermore, I do not see any evidence that injustice will be caused to the third defendant by allowing the amendment. The third defendant's application to struck out was also heard and decided simultaneously with this application for amendment. The third defendant's allegation that the plaintiff's application was done to delay its application is therefore misplaced.

Appeal allowed.

Reported by Afiq Mohamad Noor